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UNITED STATES DISTRICT COURT
DISTRICT COURT OF OREGON
EUGENE DIVISION

RICK CHESSELET,

Plaintiff,

v.

JPW INDUSTRIES, INC., a Washington
for-profit corporation; and SOUTHERN
CARLSON, INC., a Delaware corporation,

Defendants.

CASE NO. 6:21-cv-01645-MK

FIRST AMENDED CIVIL COMPLAINT

DEMAND FOR JURY TRIAL

Plaintiff alleges:

Allegations Common to all Claims for Relief

1.

Plaintiff Rick Chesselet (“plaintiff”), brings this action against JPW Industries, Inc. and SouthernCarlson, Inc. (“defendants”) for personal injuries caused by defendants’ negligence in Oregon.

2.

At all relevant times, JPW Industries Inc. (“JPW”) was a Washington for-profit corporation doing business as JET. Further, at all times material herein, JPW controlled its agents or

employees in all aspects of its operation and service. JPW conducted, and continues to conduct, a substantial portion of its business in Oregon, including the regular and sustained business of manufacturing and wholesaling of tools. At all times material herein, JPW's agents or employees were acting within the course and scope of their agency or employment. As such, JPW was vicariously liable, including under the doctrine of respondeat superior, for the acts and omissions of its agents or employees.

3.

On information and belief, at all relevant times, SouthernCarlson, Inc. ("SouthernCarlson") was a Delaware corporation doing business as Western Tool Supply. Further, at all times material herein, SouthernCarlson controlled its agents or employees in all aspects of its operation and service. SouthernCarlson conducted, and continues to conduct, a substantial portion of its business in Oregon, including the regular and sustained business of manufacturing and wholesaling of tools. At all times material herein, SouthernCarlson's agents or employees were acting within the course and scope of their agency or employment. As such, SouthernCarlson was vicariously liable, including under the doctrine of respondeat superior, for the acts and omissions of its agents or employees.

4.

On or about April 28, 2019, plaintiff purchased a Horizontal/Vertical Bandsaw ("the bandsaw") with model number HVBS-712D, stock number 414560, and serial number 1710BF01813 from another mechanic in town, the "Subaru Guru".

5.

The bandsaw was manufactured by JPW and distributed by SouthernCarlson to the third-

party mechanic in Bend Oregon at some point in 2018. The Subaru Guru did not change or modify the machine prior to Plaintiff.

6.

On or about May 11, 2019, plaintiff used the bandsaw for the first time. As he pushed material toward the bandsaw to be cut, the work stops which held the material in place kept vibrating and falling. The set screw to hand tighten and secure the work stop was located underneath the saw blade. Plaintiff reached to tighten the set screw to secure the work stop in place. As he released his grip from the set screw, a spinning brush caught his fingers, throwing his hand upward into the saw and severing his thumb.

7.

As a result of defendants' actions, plaintiff sustained the following injuries and damages:

- a) The permanent loss of his right thumb;
- b) Physical pain and suffering and emotional distress;
- c) Susceptibility to re-injury to these same injured areas;
- d) Susceptibility to degenerative process to these same injured areas; and
- e) As a further result of his injuries, plaintiff has and will continue to suffer physical, mental and emotional pain.
- f) His right to enjoy life has been diminished because of his inability to engage in his normal activities without pain.

All told plaintiff's non-economic damages are in an amount the jurors find to be appropriate. However, the total amount of non-economic damages awarded are not to exceed an aggregate of \$2,000,000.00.

FIRST CLAIM FOR RELIEF

(Count One: Strict Liability Under ORS 30.920)

8.

Plaintiff realleges paragraphs 1 through 7 as though set forth fully herein.

9.

JPW's design of the bandsaw was defective in that the work stops would immediately vibrate loose and begin to fall while the machine was running, even when the set screw was tightened prior to turning it on. The set screw was made to be hand tightened, and yet when hand tightened, the screw would fail. This could have easily been cured with a "D" style rod, which is flat on one side and would have remained secure upon tightening the set screw prior to turning the unit on. Furthermore, the placement of the set screw directly under the blade was unnecessary and could have easily been located far away from the blade. Furthermore, the blade itself should have been equipped with a guard in the area of the set screw which would have prevented just the kind of harm that came to plaintiff in this case. Finally, JPW failed to provide adequate warning relating to the above dangerous conditions.

10.

JPW's defective design in each of the above respects, resulted in defective condition that rendered the bandsaw unreasonably dangerous to plaintiff, the consumer.

11.

The bandsaw was expected to and did reach the plaintiff without substantial change in the condition in which it was sold.

12.

As a manufacturer and/or sellers of the bandsaw described in paragraph 5, above, defendants

are strictly liable under ORS 30.920 for the injuries and damages that plaintiff has suffered and will continue to suffer as alleged in paragraph 7 above, which are realleged and incorporated by reference herein.

(Count Two: Negligence)

13.

Plaintiff realleges paragraphs 1 through 12 as though set forth fully herein.

14.

Defendants were negligent in one or more of the following particulars, each of which created a foreseeable and unreasonable risk of harm to plaintiff:

- a) In locating the screw to tighten guardrails under the saw;
- b) In designing the bandsaw in such a way that the guardrails would loosen;
- c) In selling and providing the bandsaw in a condition that was not safe for its ordinary and foreseeable use;
- d) In failing to adequately warn plaintiff of the defective and unreasonably dangerous condition;
- e) In allowing its agents and employees to sell the bandsaw in a defective and unreasonably dangerous condition;
- f) In causing foreseeable and unreasonable injury to plaintiff; and
- g) In acting in a manner that was dangerous under the circumstances.

15.

Defendants' negligence was a substantial factor in causing plaintiff's injuries. As a result of defendants' negligence, plaintiff has suffered the injuries and damages alleged in paragraph 7 above, which are realleged and incorporated by reference herein.

(Count Three: Punitive Damages Against JPW)

16.

Plaintiff realleges paragraphs 1 through 15 as though set forth fully herein.

17.

JPW was aware or had knowledge of design defects affecting the work stops and/or set screw on the bandsaw prior to plaintiff's injury.

18.

JPW manufactured and sold the bandsaw without correcting known design defects in the work stops and/or set screw:

19.

JPW acted with malice or showed a reckless and outrageous indifference to a highly unreasonable risk of harm to others in one or more of the following particulars:

- a. Manufacturing and/or selling the product without correcting the known design defects affecting the work stops and set screw;
- b. Selling the product without conducting adequate safety testing;
- c. Selling the product without warning consumers of the known design defects affecting the work stops and set screw; and
- d. Selling the product in a known defective and unreasonably dangerous condition.

20.

JPW acted with a conscious indifference to the health, safety and welfare of others in one or more of the following particulars:

- a. Manufacturing and/or selling the product without correcting the known design defects affecting the work stops and set screw;

- b. Selling the product without conducting adequate safety testing;
- c. Selling the product without warning consumers of the known design defects affecting the work stops and set screw; and
- d. Selling the product in a known defective and unreasonably dangerous condition.

21.

JPW's reckless and outrageous conduct alleged in paragraphs 18 through 21 was done with malice and a conscious indifference to plaintiff's safety and welfare. As such, plaintiff is entitled to an award of punitive damages in an amount to be proven at trial.

WHEREFORE, plaintiff requests judgment against defendants as follows:

- a) Plaintiff's noneconomic damages in the amount of \$2,000,000;
- b) As to JPW only, punitive damages in an amount to be determined at trial;
- c) Plaintiff's costs and disbursement incurred herein; and
- d) Such other relief that the Court deems just and equitable.

DATED: March 24, 2023.

MILLER & HOPP, ATTORNEYS AT LAW

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CERTIFICATE OF SERVICE

**I hereby certify that I caused a true copy of the foregoing document to be served on
the following parties in the manner indicated below on March 24, 2023:**

Joshua Lee
RILEY SAFER HOLMES & CANCELA LLP
456 Montgomery St., Floor 16
San Francisco, CA 94104
Tel: (415) 275-8551
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Attorney for Defendants

<input checked="" type="checkbox"/>	through ECF filing with the U.S. District Court (efiling system); email notification on the date set forth below, a copy thereof, by electronic service to the email address of said attorneys, as listed above.
<input type="checkbox"/>	by mailing a full, true and correct copy thereof in a sealed first-class postage prepaid envelope, addressed to the foregoing attorney at the last known office address of the attorney, and deposited with the United States Post Office at Portland, Oregon on the date set forth above.
<input type="checkbox"/>	by causing a full, true and correct copy thereof to be hand delivered to the attorney at the last known address listed above on the date set forth above.
<input checked="" type="checkbox"/>	by emailing a full, true and correct copy thereof attorney at the email address shown above, which is the last-known email for the attorney's office on the date set forth above.
<input type="checkbox"/>	by faxing a full, true and correct copy thereof to the attorney at the fax number shown above, which is the last-known fax number for the attorney's office on the date set forth above.

By: /s/ Emmanuel B. Miller
Emmanuel B. Miller, OSB#151319
Attorney for Plaintiff